

Greenwich Air Services and Guy Knaak and Robin Sowma. Cases 12-CA-17584 and 12-CA-17595

June 30, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND HIGGINS

On December 16, 1996, Administrative Law Judge J. Pargen Robertson issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.²

1. In affirming the judge's finding that Supervisor Robin Sowma was discharged in violation of Section 8(a)(1) of the Act, we note that the record clearly establishes that Sowma was discharged for failing to cooperate in the Respondent's unlawful scheme to discharge employee Guy Knaak for perceived union activity. See *Phoenix Newspapers*, 294 NLRB 47, 48 (1989) (finding discharge of supervisor a violation of Sec. 8(a)(1) because it was based on supervisor's failure to cooperate in scheme to "manufacture" grounds for discharging union activist). Knaak began his employment on October 7, 1995,³ and was terminated 7 weeks later, purportedly because of his work performance. Sowma was Knaak's leadman and his supervisor at all relevant times.⁴ Soon after Knaak's hire, the Respondent learned of his past affiliation with the International Association of Machinists, unlawfully interrogated him, and solicited Sowma "to keep an eye on him" so that he could be terminated if he engaged in any union activity. Although these instructions were repeated a few weeks later, Sowma consistently ad-

vised that Knaak was a good worker and was not engaged in union activity. On November 27, Supervisor Fred Solhjou informed Sowma that the Respondent planned to terminate Knaak because it had proof that Knaak was actively involved with IAM.⁵ Sowma refused to participate in the discharge and instead warned Knaak about it and accompanied him on November 28 to speak with owner and officer, John Conese Jr., in an effort, albeit unsuccessful, to save Knaak's job. Sowma was terminated immediately after Knaak was discharged.

Under these circumstances, we find that Sowma's discharge falls within the exceptions set forth in *Parker-Robb Chevrolet*⁶ to the general principle that supervisory discharge does not violate the Act.⁷

2. The judge found that the Respondent, through Supervisor Sowma, violated the Act by statements that he made to employee Knaak. The Respondent contends that such statements were privileged under *Paintsville Hospital Co.*, 278 NLRB 724 (1986). In that case, two supervisors engaged in conduct that ordinarily would be violative of Section 8(a)(1). However, the Board dismissed the 8(a)(1) allegations because the supervisors were prounion and were acting out of their own interests and sympathies. In the instant case, by contrast, there is no "extensive evidence" that Sowma was acting out of personal prounion sympathies (see *Paintsville*, 278 NLRB at 725 fn. 9), as distinct from a hope that an individual he believed was a good employee would not be fired for unlawful reasons unrelated to the quality of his work. The warnings Sowma gave to Knaak about the danger of being fired because of his past involvement with the Union and the need therefore to "sign a paper" disavowing such involvement would certainly tend to coerce Knaak "in the exercise of the rights guaranteed by Section of the Act." That coercive message was entirely consistent with the animus against Knaak's union involvement repeatedly voiced to Sowma by the Respondent's managers. In

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² On April 2, 1997, the Board received a joint motion filed by the Charging Party and the Respondent in Case 12-CA-17584, which sought to have that case remanded to the Regional Director for dismissal of the complaint and for further appropriate action. The General Counsel, in response, states that he does not oppose a settlement between those parties except insofar as dismissal of the complaint in Case 12-CA-17584 might affect the viability of findings supporting the related decision in Case 12-CA-17595. The General Counsel's concerns are not insubstantial. We, therefore, deny the joint motion without prejudice to having the parties' private settlement considered by the Regional Director at the compliance stage.

³ Hereafter, all dates refer to 1995.

⁴ Sowma was promoted to the supervisory position in late October or early November.

⁵ In fact, there is no evidence that Knaak, a former union steward at Eastern Airlines, engaged in union activity while in the Respondent's employ.

⁶ We note that in *Pontiac Osteopathic Hospital*, 284 NLRB 442 (1987), on which the Respondent principally relies, the supervisor who was found to have been lawfully discharged for "failing to support" a management decision to discharge an employee and who was discouraged from participating in a non-Board, noncontractual hearing on the employee's behalf, was not asked or directed to participate in an unlawful discharge scheme, as was Sowma.

Chairman Gould agrees that the Respondent unlawfully discharged Supervisor Sowma for refusing to cooperate in its unlawful scheme to discharge employee Knaak. The Chairman, however, adheres to his position announced in *Cincinnati Truck Center*, 314 NLRB 554, 556 fn. 11 (1994), that discrimination against a statutory supervisor violates the Act whenever there is a reasonable inference that such discrimination will chill the concerted or union activities of statutory employees. Consistent with this position, the Chairman disagrees with the Board's decision in *Parker-Robb*, supra.

⁷ 262 NLRB 402 (1982), enf'd. 711 F.2d 383 (D.C. Cir. 1983).

any event, given the credited testimony that Respondent's supervisor, Dean Morgan, had expressly directed Sowma to report to the managers if Knaak "mentioned anything about the Union so the Respondent could get rid of him," it is hardly open to the Respondent to claim that statements by Sowma to Knaak that would tend to discourage union activities are not attributable to it. See *Harmony Corp.*, 301 NLRB 578, 579-580 (1991) (finding "helpful" anti-union warnings by supervisors unlawful since "they would reasonably appear to be in keeping with the Respondent's policy of intimidating employees to discourage them from engaging in union activity). See also *Central Broadcast*, 280 NLRB 501, 502-503 (1986) (interrogations by friendly supervisor found coercive where questions were in context of discussion of employer's impending unlawful layoffs of union supporters).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Greenwich Air Services, Miami, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Arturo Ross, Esq. and *Hector O. Nava, Esq.*, for the General Counsel.

Harry N. Turk, Esq., of Miami, Florida, for the Respondent.

DECISION

J. PARGEN ROBERTSON, Administrative Law Judge. This hearing was held on September 9, 1996, in Miami, Florida. A complaint issued on February 26, 1996. The charges were filed on December 6 and 7, 1995.

All parties were represented and afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Respondent and the General Counsel filed briefs. On consideration of the entire record and the briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent admitted that, at all material times, it has been a corporation with an office and place of business in Miami, Florida. It admitted that it has been engaged in the business of repairing, refurbishing, and overhauling gas turbine engines as well as servicing aeroderivative engines and providing management services for the sale, refurbishment, and worldwide installation of complete gas turbine power plants. It admitted that during the 12 months ending December 31, 1995, in the course and conduct of its business operations, it purchased and received at its Florida location goods and materials valued in excess of \$50,000 from points located outside Florida. Respondent admitted that at material times it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act (the Act).

II. LABOR ORGANIZATION

Respondent stipulated at the hearing that International Association of Machinists and Aerospace Workers has been at material times a labor organization within the meaning of Section 2(5) of the Act.

III. THE ISSUES

The complaint alleged that Respondent engaged in conduct in violation Section 8(a)(1) of the Act by acts of two alleged supervisors, of Section 8(a)(1) and (3) of the Act by discharging employee Guy Knaak, and Section 8(a)(1) of the Act by discharging Supervisor Robin Sowma because he refused to engage in conduct in violation of Section 8 of the Act.

IV. FINDINGS

The record:

There was testimony from Robin Sowma and Guy Knaak regarding the discharge of Sowma and Knaak. There is no dispute in evidence that both were discharged. After Knaak's discharge, Sowma was discharged because of his involvement in the events leading to Knaak's discharge. At the times of their discharge Knaak was an employee and Sowma was a supervisor.

The parties stipulated that Robin Sowma became a supervisor on either October 30 or November 13, 1995. Respondent contended that he became supervisor on November 13 and that he was in training to become a supervisor on October 30. The General Counsel contended that Sowma was made a supervisor on October 30.

Robin Sowma worked for Respondent from December 19, 1994. Around June 1995 Sowma was promoted to leadman in the JT-8 subassembly area. Dean Morgan was supervisor in the JT-8 shop. Morgan reported to Supervisor Fred Solhjou. Solhjou reported to General Manager Mike Bartosh.

Guy Knaak testified that he worked for Respondent from October 7, 1995, until November 30, 1995. Knaak's supervisor was Dean Morgan until Robin Sowma was promoted to supervisor. Sowma was promoted to supervisor approximately 1 month after Knaak started working for Respondent.

During the first or second week after Knaak started work, Supervisor Fred Solhjou picked up an IAM (Union) ruler from Knaak's toolbox. Solhjou said to Knaak, "oh, a shop steward, hum? You know, we know all about you, we made phone calls." Knaak also had two IAM stickers on the front part of his roll-a-way toolbox. Guy Knaak left his toolbox at work both during and after his shift each day. Knaak testified that he was the only employee with IAM labels on his toolbox.

While he was a leadman Sowma discussed the job performance of the employees on his team with his supervisor. He recalled the first discussion regarding Guy Knaak was with Supervisor Dean Morgan shortly after Knaak started working for Respondent. Sowma told Morgan that Sowma was a little rusty but that he was getting the hang of his work really fast. Morgan replied that Knaak was a shop steward at Eastern Airlines and for Sowma to keep an eye on him. Morgan told Sowma to let him or Fred Solhjou know if Knaak mentioned anything about the Union so they could get rid of him.

Dean Morgan never said anything to Knaak to show that he was unhappy with Knaak's work.

In late October Sowma was called over by Supervisors Dean Morgan and Fred Solhjou. Solhjou asked how Knaak was doing. Sowma replied that he was really rusty, but "he's doing really good." Solhjou asked if Knaak ever mentioned anything about the Union. Sowma replied no, he didn't. Solhjou told Sowma to let them know if Knaak said anything about the Union so they can get rid of him.

Guy Knaak has been a member of the Union since around 1980. He was a shop steward and organizing representative for Local Lodge 702, District 100 between 1983 and 1989 while he worked for Eastern Air Lines.

Sowma testified that Solhjou asked him about Knaak's work performance on several occasions. Sowma told him that Knaak was a good worker and that he was happy with him.

On November 27, 1995, Solhjou told Sowma that he was going to let Knaak go. Solhjou said they had proof that Knaak was still actively involved with the Union. Sowma told Solhjou that Knaak had never mentioned anything about the Union and he was surprised, because Knaak was a good worker.

On November 28 Sowma came in early and talked with Solhjou. He told Solhjou that the stuff about Knaak really bothered him, that they were just starting to build up a real good shift and Knaak was a good worker. That he would hate to lose him. Sowma suggested that if he was worried about Knaak and union activities, he could have Knaak sign a statement stating that he is not involved with a union. Solhjou told Sowma that he would talk to Mike Bartosh.

Around 4 or 4:15 p.m. on November 28, Fred Solhjou called Sowma to go with him and talk to Mike Bartosh. On the way to Bartosh's office Solhjou told Sowma to not mention anything about the Union, because Sowma was not supposed to know what is going on. Solhjou told Sowma that he did not know about Knaak's union connection when Knaak was hired but that he had found out that Knaak was on a blacklist. When Mike Bartosh found out about the blacklist he was "pissed" at Solhjou for hiring Knaak.

When he and Solhjou arrived at Bartosh's office, Sowma told Bartosh that Knaak was getting the stuff down pat and that he would hate to lose him. Sowma said that Knaak does whatever he tells him regardless of what it is. That Knaak has a good attitude and is a good worker.

Later Solhjou came to Robin Sowma and said they were going to let Knaak go anyway. Sowma replied to Solhjou, "whatever, Fred, but I'm not going to do it. You're going to have to do it yourself."

On November 28 during the 10 o'clock break, Supervisor Robin Sowma told Guy Knaak that some of Respondent's supervisors felt Knaak was still actively involved with the Union and they wanted to fire Knaak. Knaak replied that stuff was in his past and that he just came to Greenwich to get a job and work.

On the next shift Knaak came in early and told Sowma that he wanted to talk to Mike Bartosh or Fred Solhjou to get the issue resolved. Sowma told Knaak that he should volunteer to sign a paper stating that he was not involved with the Union. Knaak agreed that was a good idea.

Sowma agreed to go with Knaak to see Mike Bartosh. When Knaak met Sowma in the parking lot around 1:30 p.m., Knaak suggested going straight to the owner, Conese.

At Sowma's suggestion they first tried Vice President Graham Bell but Bell was out of town. Sowma and Knaak then went back to see Mike Bartosh. Bartosh told them that he was too busy at that time to talk with them and that he would try to get with them later.

Sowma went with Knaak to the office of the owner. They had to return after lunch when they saw Conese Jr. around 3 p.m. Sowma introduced himself as the JT-8 supervisor and Knaak as a worker that Bartosh and Solhjou wanted to discharge. Sowma told Conese that the Union might be the reason why they wanted to discharge Knaak. Knaak told Conese that he thought they wanted to fire him, because they suspected his prior union activities but that all Knaak wanted to do was come there and work. Conese replied that if it has anything to do with the Union he didn't want to hear any union stuff.

Knaak told Conese that the union stuff was in his past, that he was no longer involved with the Union, and that he just came to Greenwich to get a job and work. Sowma told Conese that Knaak was willing to sign a paper stating that he was not part of the Union any more and that he could be fired if he did something. Conese told Sowma that he thanked him for coming by and standing up for one of his employees and that he was an equal opportunity employer.

After leaving Conese, Sowma went to Fred Solhjou and told Solhjou about their visit with Conese. Solhjou became angry and told Sowma that was the stupidest decision he ever made.

Later that day Fred Solhjou asked Knaak to come to his desk. Solhjou told Knaak that he felt Knaak's work was substandard and he was terminating him. That was the first time that any supervisor had complained to Knaak about his work.

Sowma noticed Knaak slam shut his toolbox and realized that Knaak had been fired. About 5 minutes later Solhjou called Sowma to his desk and discharged Sowma.

Respondent called Dean Morgan. Morgan testified that he first evaluated Guy Knaak's work 2 or 3 weeks after Knaak started work. At that time he rated Knaak unqualified as an A mechanic even though Knaak was rated as an A mechanic. The evaluation was not in writing. Morgan testified that evaluations during probationary periods, like the one on Knaak, were not normally in writing. Morgan occasionally told leadman Sowma that Knaak's work should be brought up to speed. Sowma denied that he and Morgan had such conversations.

Dean Morgan denied that he told Sowma that he knew that Guy Knaak had worked for Eastern and that Knaak had been a union shop steward. He denied telling Sowma to let him know if Knaak ever mentioned unions.

Morgan admitted that approximately 2 days before Guy Knaak was discharged Sowma told him that Knaak was going to be discharged and that Sowma felt it was because of Knaak's union activities. Morgan told Sowma that was ridiculous. Morgan denied ever having a conversation with Sowma and Solhjou regarding Knaak's union activities.

Mike Bartosh is general manager of narrow body engine production for Respondent. During material times he was general manager of overall production. Bartosh testified that he had several conversations with Fred Solhjou regarding Guy Knaak's performance. Solhjou said that Knaak was not performing at an A mechanic level. Bartosh testified that he agreed to discharge Knaak because Knaak's work perform-

ance was deficient. He denied that anything was said about Knaak's union activities. Bartosh denied that he knew anything about Knaak being a shop steward at Eastern Airlines. Bartosh denied knowing of a blacklist of employees or applicants that would not be hired because of prior union activity.

Bartosh testified that he consulted with Fred Solhjou, Human Resources Vice President Skelley, and Senior Vice President Graham Bell, and decided to discharge Robin Sowma because Sowma had skipped over him and gone directly to President Conese regarding the Knaak discharge.

Credibility

Robin Sowma appeared to testify truthfully. I fully credit his testimony on the basis of his demeanor and the full record. I also credit Guy Knaak whose testimony was supported by the full record and the credited testimony of Sowma. Substantial portions of Sowma and Knaak's testimony was un rebutted. Both testified about material conversations with Fred Solhjou and Conese Jr. Neither Solhjou nor Conese testified. Of the two, Sowma impressed me as having better recollection. To the extent there is conflicts between their recollection, I credit Sowma.

I am unable to credit the testimony of Dean Morgan to the extent it conflicts with credited evidence. I make that finding on the basis of Morgan's demeanor and the full record. I was troubled by Morgan's limited denial that he discussed Knaak's union activities with Robin Sowma. Even Morgan's admission that he had one conversation with Sowma in which Sowma told him that he felt Knaak was being discharged because of union activities, does not appear truthful. According to Morgan's account he did not question Sowma as to why Sowma felt Knaak's union activities contributed to his discharge. Instead he told Sowma that was ridiculous and there was no other conversation regarding the union activities question. I am convinced that Morgan was not being truthful regarding the circumstances dealing with Knaak's union activities.

I am not persuaded that Mike Bartosh was truthful in his testimony that he had no knowledge of Knaak's prior union activities. There was nothing in the record disputing evidence that Knaak's union activity as steward was known to Supervisor Fred Solhjou. It is undisputed that Solhjou told Knaak that he had learned of Knaak's service as a chief steward. Moreover, there was no testimony disputing Robin Sowma's testimony that Fred Solhjou told him that supervision was aware of Knaak's prior union positions. Fred Solhjou did not testify. In view of his demeanor and the full record I find that Bartosh was not credible.

Conclusions

Section 8(a)(1):

The complaint includes allegations that Supervisors Fred Solhjou and Robin Sowma engaged in conduct in violation of Section 8(a)(1) of the Act.

Fred Solhjou:

Interrogation:

Told employees of Surveillance:

Guy Knaak credibly testified that during the first or second week after he started work Fred Solhjou picked up an IAM ruler from Knaak's toolbox. Solhjou said to Knaak, "Oh, a shop steward, hum? You know, we know all about you, we made phone calls." Knaak also had two IAM stickers on the

front part of his roll-a-way toolbox. Guy Knaak left his toolbox at work both during and after his shift each day. Knaak testified that he was the only employee with IAM labels on his toolbox.

The General Counsel argued that Solhjou's comments constitute violation of Section 8(a)(1) by creating the impression of surveillance and interrogating Knaak about his union activities.

Respondent argued that Knaak's testimony was not credible. However, that testimony was not rebutted. Supervisor Fred Solhjou did not testify. Moreover, I find Knaak's testimony was credible.

Respondent argued that in any event Solhjou's alleged comments do not constitute violations of the Act in view of *Rossmore House*, 269 NLRB 1176 (1984). Respondent argued that Knaak was an open and active union supporter.

I find that the record failed to support Respondent. The testimony of Guy Knaak, which was credited and not rebutted, showed that he was not an open or active union supporter at material times. Knaak testified that he did not engage in union activity while working for Respondent. There was evidence to the effect that Respondent may have believed that Knaak was active. However, there was no evidence in the record showing that Knaak was active with the Union.

Knaak did have a ruler and stickers on his toolbox illustrating support for the IAM. However, he did not hold himself out as being a former chief steward. That matter was first brought up by Supervisor Solhjou. Moreover, Knaak consistently denied to Respondent supervision that he was currently involved in any union activity.

I find in agreement with the General Counsel that Solhjou's comments to Knaak were coercive and constitute interrogation and impression of surveillance in violation of Section 8(a)(1).

Robin Sowma:

Threat to discharge:

Interrogation:

Impression of Surveillance:

Ordered employees to desist from union activities:

Threatened reprisals:

On November 28, 1995, during the 10 break, Supervisor Robin Sowma told employee Guy Knaak that some of Respondent's supervisors felt Knaak was still actively involved with the Union and they wanted to fire Knaak. Sowma admitted that he told Knaak that Respondent's supervisors wanted to fire Knaak because he was actively involved in the Union. Knaak replied that stuff was in his past and that he just came to Greenwich to get a job and work.

On the work shift after November 28 Knaak told Sowma that he wanted to see Supervisor Fred Solhjou or Mike Bartosh and talk to them about the question of his union activities. Sowma suggested that Knaak tell the supervisors that he would sign a paper that he was not involved with the Union. Knaak told Sowma that he would do that.

Sowma admitted that on the shift after November 28 Knaak came in early and told Sowma that he wanted to talk to Mike Bartosh or Fred Solhjou to get the issue resolved. Sowma told Knaak that he should volunteer to sign a paper stating that he was not involved with the Union. Knaak agreed that was a good idea.

After unsuccessful efforts to see Bartosh and a vice president, Robin Sowma went with Knaak to the office of the owner. Sowma introduced himself as the JT-8 supervisor and Knaak as a worker that Bartosh and Solhjoui wanted to discharge. Sowma told President Conese that the Union might be the reason why they wanted to discharge Knaak.

Knaak told Conese that the union stuff was in his past, that he was no longer involved with the Union and that he just came to Greenwich to get a job and work. Sowma told Conese that Knaak was willing to sign a paper stating that he was not part of the Union any more and that he could be fired if he did something. Conese told Sowma that he thanked him for coming by and standing up for one of his employees and that he was an equal opportunity employer.

Respondent contended that the test in determining agency is "whether, under all the circumstances, the employees would reasonably believe that the employee in question (alleged agent) was reflecting company policy and speaking and acting for management." *Great American Products*, 312 NLRB 962, 963 (1993).

The General Counsel argued that Respondent is responsible for Sowma's conduct while he was a supervisor regardless of whether Sowma's conduct was authorized. *NLRB v. Ace Comb Co.*, 342 F.2d 841, 844 (8th Cir. 1965); *Jay Foods v. NLRB*, 573 F.2d 438, 445 (7th Cir. 1978). See *Trader Horn of New Jersey, Inc.*, 316 NLRB 194 (1995).

The General Counsel argued that by Sowma telling Knaak that supervisors wanted to fire him because of his union activities, Respondent threatened Knaak with discharge. *J. T. Slocumb Co.*, 314 NLRB 231 (1994). The General Counsel argued that Sowma's comment also had the effect of threatening reprisals for union activity and with creating the impression that Knaak's activities were under surveillance.

The General Counsel argued that Sowma's comment constituted interrogation by accusing Knaak of current union activity and prompting a defensive statement to explain whether Knaak was currently involved in union activity; and that by Sowma's suggestion to Knaak that Knaak sign a paper stating he was not involved with the Union, Respondent was ordering Knaak to desist from engaging in union activities.

Respondent argued that evidence regarding Sowma's alleged comments was not credible. In view of the testimony of both Knaak and Sowma, Respondent argued that Sowma's comments that Knaak should sign a paper was made by Sowma independently and should not be attributed to Respondent. *Great American Products*, 312 NLRB 962, 963 (1993), and cases cited therein.

I find that the record does support the statements as alleged by the General Counsel. The Board in *Great American* held that when an employee is not a supervisor the employer may be responsible for his conduct when the employees "would reasonably believe that the employee in question (alleged agent) was reflecting company policy." *Id.* at 962, 963. *Great American* must be distinguished. In the instant case Sowma was an admitted supervisor.

The proper test here, where an employee is engaged in conversations with an admitted supervisor, is not what the supervisor intended but what was the employee reasonably led to believe. Here, I find that the General Counsel proved that the comments by Sowma had the tendency to coerce employee Guy Knaak to avoid engaging in union activity in violation of Section 8(a)(1).

Respondent allegedly discharged Supervisor Robin Sowma in violation of Section 8(a)(1) of the Act:

As shown above, while he was a leadman and subsequently after becoming supervisor, Sowma discussed the job performance of the employees on his team with his supervisor. He recalled the first discussion regarding Guy Knaak was with Supervisor Dean Morgan shortly after Knaak started working for Respondent. Sowma told his supervisors that Sowma was a little rusty but that he was getting the hang of his work really fast. Both Morgan and Solhjoui told Sowma that Knaak was a shop steward at Eastern Airlines and for Sowma to keep an eye on him. They told Sowma to let them know if Knaak mentioned anything about the Union so they could get rid of him.

On November 27, 1995, Solhjoui told Sowma that he was going to let Knaak go. Solhjoui said they had proof that Knaak was still actively involved with the Union. Sowma told Solhjoui that Knaak had never mentioned anything about the Union and he was surprised, because Knaak was a good worker.

On November 28 Sowma came in early and talked with Solhjoui. He told Solhjoui that the stuff about Knaak really bothered him, that they were just starting to build up a real good shift and Knaak was a good worker. That he would hate to lose him. Sowma suggested that if he was worried about Knaak and union activities, he could have Knaak sign a statement stating that he is not involved with a union. Solhjoui told Sowma that he would talk to Mike Bartosh.

Solhjoui called Sowma to go with him and talk to Mike Bartosh. On the way to Bartosh's office Solhjoui told Sowma to not mention anything about the Union because Sowma was not supposed to know what's going on. Solhjoui told Sowma that he did not know about Knaak's union connection when Knaak was hired but that he had found out that Knaak was on a blacklist. When Mike Bartosh found out about the blacklist he was pissed at Solhjoui for hiring Knaak.

When he and Solhjoui arrived at Bartosh's office, Sowma told Bartosh that Knaak was getting the stuff down pat that that he would hate to lose him. Sowma said that Knaak does whatever he tells him regardless of what it is. That Knaak has a good attitude and is a good worker.

Later on Solhjoui came to Sowma and said they were going to let Knaak go anyway. Sowma replied to Solhjoui, "whatever, Fred, but I'm not going to do it. You're going to have to do it yourself."

On November 28 Sowma told Knaak that they wanted to fire Knaak because he was actively involved in the Union. Knaak replied that stuff was in his past and that he just came to Greenwich to get a job and work.

On the next shift Knaak came in early and told Sowma that he wanted to talk to Mike Bartosh or Fred Solhjoui to get the issue resolved. Sowma told Knaak that he should volunteer to sign a paper stating that he was not involved with the Union. Knaak agreed that was a good idea.

Sowma agreed to go with Knaak to see Mike Bartosh. When Knaak met Sowma in the parking lot, Knaak suggested going straight to the owner, Conese. At Sowma's suggestion they first tried Vice President Graham Bell but Bell was out of town. Sowma and Knaak then went back to see Mike Bartosh. Bartosh told them that he was too busy at that time and that he would try and get with them later.

Sowma and Knaak saw Conese Jr. Sowma introduced himself as the JT-8 supervisor and Knaak as a worker that Bartosh and Solhjou wanted to discharge. Sowma told Conese that the Union might be the reason why they wanted to discharge Knaak. Knaak told Conese that he thought they wanted to fire him because they suspected his prior union activities but that all Knaak wanted to do was come there and work. Conese replied that if it has anything to do with the Union he didn't want to hear any union stuff.

After leaving Conese, Sowma went to Fred Solhjou and told Solhjou about their visit with Conese. Solhjou became angry and told Sowma that was the stupidest decision he ever made.

Later that day Fred Solhjou asked Knaak to come to his desk. Solhjou told Knaak that he felt Knaak's work was substandard and he was terminating him. Sowma noticed Knaak slam shut his toolbox and realized that he had been fired. About 5 minutes later Solhjou called Sowma to his desk and discharged Sowma.

I credit the testimony of Robin Sowma that he consistently reported to Dean Morgan, Fred Solhjou, and finally to Mike Bartosh that Guy Knaak was a good worker. In the presence of Solhjou, Sowma told Bartosh that Knaak was a good worker with a good attitude, who had no qualms about cleaning up or doing anything asked of him. Before Knaak was discharged Sowma told Respondent's owner that Knaak was a good worker.

Respondent argued that discharge of supervisor Sowma did not constitute a violation of Section 8(a)(1) of the Act. *Parker-Robb Chevrolet*, 262 NLRB 402 (1982). Respondent argued that it may discharge a supervisor for disagreeing with a decision to discharge an employee. *Pontiac Osteopathic Hospital*, 284 NLRB 442 (1987).

The General Counsel cited *Phoenix Newspapers*, 294 NLRB 47 (1989), in arguing that an employer engaged in violative conduct by discharging a supervisor for failing to cooperate with the Respondent's unlawful scheme to manufacture a case against an employee who was engaged in protected activity.

In consideration of the above arguments, I shall consider what the record shows as to the reason Respondent discharged Robin Sowma. Respondent offered a memo to M. Bartosh from F. Solhjou dated December 7, 1995. That memo shows under items 5 through 7, that Respondent discharged Sowma, because he went with Guy Knaak to talk with the president of the Company of November 30, 1995. Sowma's activity is described as "lack of professionalism and also disregarding the chain of command."

The General Counsel pointed to Respondent's employee handbook to prove that Sowma was not discharged because he broke Company policy by going with Knaak to see Conese:

To have optimum communications, we have an Open Door Policy, which encourages employees to speak with any supervisory person to discuss matters of concern. If a time arises when you feel you may have a complaint or problem, first talk it over with your supervisor. Most misunderstandings can be resolved by a calm and frank discussion. If you do not receive a satisfactory resolution to your concern, by all means, communicate with another mem-

ber of management to resolve problems between individuals by having joint meetings. All employees will be able to communicate their concerns without reprisals.

....

OPEN DOOR POLICY

The Company utilizes an "open door policy" with regard to work-related problems or complaints you may have. This policy provides access to any member of management for a verbal discussion without going through the normal chain of command. It is suggested and preferred, however, that if you have a problem or complaint, discuss it with your immediate supervisor, who, in most cases will be able to help you. If you prefer, you may also discuss the matter with your manager.

There was insufficient evidence to prove that Sowma was discharged, because he refused to illegally discharge Knaak. When Sowma told Solhjou that he would not discharge Knaak there was no reaction from Solhjou. No one with Respondent ever made any showing that Sowma was being discharged, because he refused to personally discharge Knaak.

However, I agree with the General Counsel that the record proved that it was Respondent's practice to permit its employees to complain to anyone in supervision without reprisal. Respondent, by claiming to discharge Sowma for engaging in a practice that is welcomed by the employee handbook, was engaged in pretext. The record showed that Sowma was not discharged simply because he accompanied Knaak to see Conese.

At the beginning of the day of Sowma's discharge, no action was planned against Sowma. On that day Sowma, for the first time, openly assisted Knaak in defending against the accusation that Knaak was currently involved in union activity. Sowma argued to both Solhjou and Conese that Knaak could sign a paper promising to not engage in union activity. The record which is discussed in the section of this decision dealing with the discharge of Knaak, proved that Respondent was engaged in an effort to mislead Knaak into believing that he was discharged because of his work performance. Sowma refused to engage in that activity and assisted Knaak in trying to head off his illegal discharge. Nevertheless, Respondent discharged Guy Knaak because of his suspected current union activity and thereafter Robin Sowma because of his efforts to assist Knaak.

I find that the evidence supports a finding that Respondent violated Section 8(a)(1) of the Act by discharging admitted Supervisor Robin Sowma because of his failure to participate or cooperate in the Respondent's unlawful scheme to discipline and discharge employee Knaak. *Phoenix Newspapers*, 294 NLRB 47 (1989).

Section 8(a)(1) and (3):

Respondent allegedly discharged employee Guy Knaak in violation of Section 8(a)(1) and (3) of the Act:

As to whether Respondent illegally discharged Guy Knaak, I shall first consider whether the General Counsel proved through persuasive evidence that the Respondent acted out of antiunion animus. *Manno Electric*, 321 NLRB 1 fn. 12 (1996); *Wright Line*, 251 NLRB 1083 (1980), enf'd. 662 F.2d

899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

[I]n order to establish a prima facie violation of Section 8(a)(1) and (3) of the Act, the General Counsel must establish (1) that the alleged discriminatees engaged in union activities; (2) that the employer had knowledge of such; (3) that the employer's actions were motivated by union animus; and (4) that the discharges had the effect of encouraging or discouraging membership in a labor organization. *Electromedics, Inc.*, 299 NLRB 928, 937, affirmed 947 F.2d 953 (10th Cir. 1991).

As to Knaak's union activities, the evidence is not in dispute. From 1980 Knaak has been a member of International Association of Machinists. While working for Eastern Air Lines from 1983 until 1989 Knaak served as shop steward.

The evidence including some that is not in dispute proved that Respondent knew of Knaak's union activity. The credited testimony of Robin Sowma proved that about 3 days after Knaak was hired Dean Morgan asked Sowma how Knaak was performing. Sowma told Morgan that Knaak was a bit rusty but was getting the hang of it really fast. Morgan told Sowma that Knaak had been a shop steward at Eastern Airlines and Sowma should keep an eye on Knaak, that if Knaak ever mentioned the Union they could get rid of him.

Guy Knaak testified that Fred Solhjou talked to him shortly after he started work for Respondent. Solhjou looked at an IAM ruler in Knaak's tools and told Knaak that Respondent had learned of Knaak's union activities including his having been chief shop steward. Solhjou did not testify. I credit the un rebutted testimony of Guy Knaak. Moreover, the testimony of Robin Sowma that Solhjou told him that Respondent was aware of Knaak's union activities is not rebutted.

It is also un rebutted that shortly before Knaak was discharged, Sowma and Knaak told Respondent's president, Conese Jr., that they suspected that Solhjou and Bartosh planned to discharge Knaak because of his past union activity.

Shortly after Robin Sowma was promoted to supervisor, Fred Solhjou asked him about Knaak. Sowma said that Knaak was a really good worker but was a bit rusty. Solhjou asked if Knaak had ever mentioned the Union. When Sowma said that Knaak had not mentioned the Union. Solhjou told him to keep an eye on Knaak and to let either Solhjou or Dean Morgan know if Knaak mentioned the Union so they could get rid of him.

Nor is there a question of motivation. It is un rebutted that Fred Solhjou told Robin Sowma that Respondent wanted to get rid of Guy Knaak because of his past union activities and it is not rebutted that Solhjou told Sowma that Respondent had decided to discharge Knaak, because they had proof that Knaak was currently engaged in union activities. Regardless of whether an employer discharges an employee because of past union activities or out of mistaken belief that the employee is currently engaged in union activities, such conduct constitutes an 8(a)(1) and (3) violation. *Trader Horn of New Jersey, Inc.*, 316 NLRB 194 (1995).

Respondent contends that Knaak was discharged because he showed himself to be unqualified to perform the work as a mechanic A. However, the undisputed testimony of Guy Knaak shows that when he was initially interviewed by Fred

Solhjou, he told Solhjou that he had last worked on the JT-8 engine 7 years earlier and that he was rusty. Solhjou hired Knaak as a class A mechanic and assigned him to work on JT-8 engines under leadman Robin Sowma and Shift Supervisor Dean Morgan.

I credit the testimony of Robin Sowma that he consistently reported to Dean Morgan, Fred Solhjou, and finally to Mike Bartosh that Guy Knaak was a good worker. In the presence of Solhjou, Sowma told Bartosh that Knaak was a good worker with a good attitude, who had no qualms about cleaning up or doing anything asked of him. Before Knaak was discharged Sowma told Respondent's owner that Knaak was a good worker.

I specifically discredit the testimony that Guy Knaak's work was deficient. Moreover, Respondent failed to show why it never discussed Knaak's alleged work deficiencies with Knaak nor did it show why it never considered nor discussed with Knaak the possibility of a demotion. It was Fred Solhjou nor Knaak, that suggested that Knaak was really needed and that elected to rate Knaak as a mechanic A. Respondent failed to show the need for mechanics did not continue and it failed to show why Knaak was not a valuable worker.

I also discredit the testimony of Bartosh that he did not consider demotion, because Knaak had misrepresented his qualifications. There was no showing of misrepresentation. Knaak's application appears to agree with undisputed testimony as to what was said during his interview with Fred Solhjou.

The record evidence including that mentioned above proved that Respondent discharged Guy Knaak because of his past union activity. The evidence illustrated that Respondent's asserted bases for Knaak's discharge were untrue and were pretextuous. The credited evidence showed that Knaak was a qualified mechanic, that his supervisor was satisfied with his work and that all the supervisor's reports to higher supervision were that Knaak's work was satisfactory. I find that the evidence showed that Knaak would not have been discharged in the absence of his prior union activity.

Respondent's motion for dismissal is denied. I find that the 8(a)(1) allegations were not improperly alleged in a charge. The 8(a)(1) complaint allegations are closely related to the charge allegations of 8(a)(1) and (3) discharges. All those actions were part of Respondent's unlawful course of conduct in seeking to rid itself of union advocates. *Outboard Marine Corp.*, 307 NLRB 1333, 1334 (1992).

CONCLUSIONS OF LAW

1. Greenwich Air Service is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. International Association of Machinists and Aerospace Workers is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent, by interrogating its employee about his union activities; by informing its employee that he was under surveillance regarding union activity; by threatening its employee that he may be discharged because of union activities; by ordering its employee to desist from union activities; by threatening its employee with reprisals because of suspected union activities; and by discharging its supervisor, Robin Sowma, because of his efforts to assist an employee avoid

being discharged in violation of Section 8(a)(1) and (3); has engaged in conduct violative of Section 8(a)(1) of the Act.

4. Respondent by discharging its employee Guy Knaak because of his union affiliation has engaged in conduct violative of Section 8(a)(1) and (3) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6), (7), and (8) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

As I have found that Respondent has illegally discharged Robin Sowma and Guy Knaak in violation of sections of the Act, I shall order Respondent to offer Sowma and Knaak immediate and full employment to their former positions or, if those positions no longer exist, to substantially equivalent positions. I further order Respondent to make Sowma and Knaak whole for any loss of earnings suffered as a result of the actions against them. Backpay shall be computed as described in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

ORDER

The Respondent, Greenwich Air Service, Miami, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating its employee about his union activities.

(b) Informing its employee that he is under surveillance regarding union activities.

(c) Threatening its employees that he may be discharged because of his union activities.

(d) Discharging its supervisor because of his action in assisting an employee avoid being discharged in violation of Section 8(a)(1) and (3) of the Act.

(e) Discharging its employee in order to discourage its employees from engaging in union activities.

(f) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days of this Order, offer Robin Sowma and Guy Knaak immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Sowma and Knaak whole for any loss of earnings and other benefits they suffered as a result of Respondent's unlawful actions plus interest in the manner set forth in the remedy section of the decision.

¹If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of Robin Sowma and Guy Knaak, and within 3 days thereafter notify Sowma and Knaak in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records, reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Miami, Florida, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 30, 1995.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 12, a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT interrogate our employees regarding employee activity in support of the International Association of

Machinists and Aerospace Workers or any other labor organization.

WE WILL NOT inform our employees that they are under surveillance regarding union activity.

WE WILL NOT threaten our employees that they may be discharged because of union activity.

WE WILL NOT order our employees to desist from union activity.

WE WILL NOT threaten our employees with reprisals because of their union activity.

WE WILL NOT discharge our employees in order to discourage our employees from engaging in union activities.

WE WILL NOT discharge our supervisors because they assist employee to avoid being discharged because of union activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights

guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL, within 14 days from the date of the Order, offer Robin Sowma and Guy Knaak full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Sowma and Knaak whole for any loss of earnings and other benefits resulting from their and discharge, less any net interim earnings, plus interest.

WE WILL, with 14 days from the date of the Order, remove from our files any reference to the unlawful discharges of Sowma and Knaak and WE WILL, within 3 days thereafter, notify Sowma and Knaak in writing that this has been done and that the discharges will not be used against them in any way.

GREENWICH AIR SERVICES